New York County Clerk's Index No. 101686/18

New York Supreme Court
Appellate Division – First Department

Appellate Case No.: 2020-02121

THE NATIONAL WASTE & RECYCLING ASSOCIATION, CITY RECYCLING CORP., EMPIRE RECYCLING SERVICES, LLC and HI-TECH RESOURCE RECOVERY, INC.,

Petitioners/Plaintiffs-Appellants,

METROPOLITAN TRANSFER STATION, INC.,

Petitioner-Plaintiff,

– and –

RAFAEL BATISTA and WILLIAM MACKIE,

Petitioners/Plaintiffs-Appellants,

– against –

THE CITY OF NEW YORK, BILL DE BLASIO IN HIS CAPACITY AS MAYOR OF THE CITY OF NEW YORK, THE CITY COUNCIL OF THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SANITATION and KATHERINE GARCIA IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE CITY OF NEW YORK DEPARTMENT OF SANITATION,

Respondents/Defendants-Respondents.

MOTION FOR LEAVE TO FILE AN *AMICI CURIAE* BRIEF IN SUPPORT OF RESPONDENTS/ DEFENDANTS-RESPONDENTS

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

THE NATIONAL WASTE & RECYCLING ASSOCIATION; CITY RECYCLING CORP.; EMPIRE RECYCLING SERVICES, LLC; HI-TECH RESOURCE RECOVERY, INC.; METROPOLITAN TRANSFER STATION, INC.; RAFAEL BATISTA; and WILLIAM MACKIE,

Appellants/Petitioners-Plaintiffs,

-against-

THE CITY OF NEW YORK; BILL de BLASIO IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF NEW YORK; THE CITY COUNCIL OF THE CITY OF NEW YORK; NEW YORK CITY DEPARTMENT OF SANITATION; and KATHRYN GARCIA IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE CITY OF NEW YORK DEPARTMENT OF SANITATION,

Respondents/Respondents-Defendants.

Appellate Div. Case No. 2020-02121

NY County Index No. 101686/2018

Notice of Motion for Leave to File an *Amici Curiae* Brief in Support of Respondents/Defendants-Respondents

PLEASE TAKE NOTICE that upon the affirmation of Melissa Iachan, an attorney duly admitted to practice law before the courts of the State of New York, dated August 19, 2020, and the accompanying proposed *Amici Curiae* Brief in Support of Respondents/Defendants-Respondents, the undersigned will move this Court at the Appellate Division Courthouse, located at 27 Madison Avenue, New York, New York, on August 31, 2020 at 9:30 a.m. or as soon

thereafter as counsel may be heard, for an order granting leave to New York City Environmental Justice Alliance, Organization United for Trash Reduction & Garbage Equity, International Brotherhood of Teamsters Local 813, and Cleanup North Brooklyn (collectively, "proposed *amici*") to file a brief as *amici curiae* in support of Respondents/Defendants-Respondents. A copy of the affirmation of Melissa Iachan in support of this motion is annexed hereto as Exhibit A, and the proposed *Amici Curiae* Brief in Support of Respondents/Defendants-Respondents is annexed hereto as Exhibit B. Respondent/Defendant-Respondent The City of New York consents to the filing of a brief by proposed *amici*.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), answering papers, if any, are to be served upon the undersigned no later than seven (7) days prior to the return date of this Motion.

Dated: New York, New York
August 19, 2020

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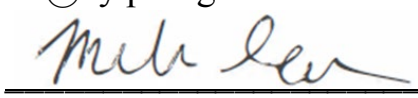
By: 
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EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

THE NATIONAL WASTE & RECYCLING ASSOCIATION; CITY RECYCLING CORP.; EMPIRE RECYCLING SERVICES, LLC; HI-TECH RESOURCE RECOVERY, INC.; METROPOLITAN TRANSFER STATION, INC.; RAFAEL BATISTA; and WILLIAM MACKIE, Appellants/Petitioners-Plaintiffs, -against- THE CITY OF NEW YORK; BILL de BLASIO IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF NEW YORK; THE CITY COUNCIL OF THE CITY OF NEW YORK; NEW YORK CITY DEPARTMENT OF SANITATION; and KATHRYN GARCIA IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE CITY OF NEW YORK DEPARTMENT OF SANITATION, Respondents/Respondents-Defendants.	Appellate Div. Case No. 2020-02121 New York County Index No. 101686/2018 **Affirmation in Support of Motion for Leave to File an *Amici Curiae* Brief in Support of Respondents/Defendants-Respondents**

MELISSA IACHAN, an attorney duly admitted to practice law before the courts of the State of New York, affirms the following under penalties of perjury pursuant to CPLR § 2106:

1. I am a senior staff attorney in the Environmental Justice Program of New York Lawyers for Public Interest and counsel to proposed *amici curiae*: New York City Environmental Justice Alliance ("NYC-EJA"), Organization United for Trash Reduction & Garbage Equity ("O.U.T.R.A.G.E."),

International Brotherhood of Teamsters Local 813 ("Local 813"), and Cleanup North Brooklyn ("CNB") (collectively, "proposed *amici*"). I am familiar with all the facts and circumstances addressed herein. I submit this affirmation in support of proposed *amici*'s Motion for Leave to File an *Amici Curiae* Brief in Support of Respondents/Defendants-Respondents.

2. Plaintiffs-Appellants seek to overturn the decision of the Supreme Court, New York County (the "IAS court"), upholding the validity of Local Law 152. Local Law 152 was enacted to relieve residents who live in specific community districts in New York City of public health hazards arising from the clustering of waste transfer stations in their neighborhoods.

3. Proposed *amici* respectfully request the Court's permission to participate in this proceeding as *amici curiae* and assert that such participation is appropriate for three reasons.

4. *First*, in the proceedings in the IAS court, proposed *amici* submitted a brief and affidavit in support of Local Law 152 and participated in the oral argument on the merits. The IAS court expressly relied on and cited proposed *amici's* submission in rendering its decision which is now appealed. *Nat'l Waste & Recycling Ass'n v. City of New York*, No. 101686/2018, 2019 WL 4899040, at *7 (N.Y. Sup. Ct., N.Y. County Oct. 4, 2019). The IAS court found that proposed *amici* identified how Local Law 152 "addresses serious public health and safety

concerns of residents who have suffered from increased air pollution." *Id*. Recognizing proposed *amici's* role in the IAS court, and indeed in the passage of Local Law 152, Plaintiffs-Appellants have even included proposed *amici* in the caption of their merits brief in this Court.

5. *Second*, proposed *amici* are membership organizations representing members who live or work in the neighborhoods that Local Law 152 is designed to benefit: the four community districts where nearly three-quarters of the City's average daily throughput of solid waste had been processed before the enactment of the new law. Proposed *amici* seek to protect their interest in the benefits of Local Law 152: reduced permitted capacity at truck-based solid waste transfer stations clustered in their neighborhoods. This decreased permitted capacity has and will continue to (i) relieve the concentration of truck traffic in these neighborhoods, (ii) reduce air pollution including harmful particulate matter from the trucks' diesel fumes, (iii) mitigate the safety issues posed by the dangerous truck traffic, and (iv) reduce the noxious smells and dust from the solid waste that the trucks carry and dump at the facilities. Without Local Law 152, members of proposed *amici* and their families will continue to suffer reduced quality of life from the high levels of truck traffic, air pollution that leads to asthma and other respiratory illnesses, and unsafe streets. Indeed, even residents outside the specific overburdened community districts discussed in Local Law 152 benefit

from the law's mandate that no community district in the City accept more than ten percent of the City's total solid waste.

6. *Third*, proposed *amici* have been advocating for legislation that would advance waste equity by reducing capacity at waste facilities in their communities for decades, including by testifying before the City Council in hearings regarding the City's 2006 Solid Waste Management Plan, and by publicly supporting each iteration of the capacity-reduction bills that ultimately became Local Law 152 (Intro 1170 of 2013; Intro 495 of 2014; Intro 157 of 2018).

7. Therefore, proposed *amici* can contribute to this proceeding by providing the Court with information to assist in its consideration of this matter, specifically their firsthand, deep knowledge of the intended benefits of Local Law 152, the legislative history of the challenged law, and the extent of the public health and safety harms it was enacted to relieve.

8. Granting *amicus* status to proposed *amici* will not delay this proceeding or prejudice the parties. Proposed *amici* ask only to submit a brief in this appeal in support of Local Law 152, which is attached as Exhibit B to the Notice of Motion.

WHEREFORE, NYC-EJA, O.U.T.R.A.G.E., Local 813, and CNB respectfully request an order granting NYC-EJA, O.U.T.R.A.G.E., Local 813, and

CNB leave to file an *Amici Curiae* Brief in Support of Respondents/Defendants-Respondents.

Dated: New York, New York
August 19, 2020

MELISSA IACHAN

EXHIBIT B

To be Submitted by:
THEODORE MAYER

New York County Clerk's Index No. 101686/18

New York Supreme Court
Appellate Division – First Department

Appellate Case No.: 2020-02121

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THE CITY OF NEW YORK, BILL DE BLASIO IN HIS CAPACITY AS MAYOR OF THE CITY OF NEW YORK, THE CITY COUNCIL OF THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SANITATION and KATHERINE GARCIA IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE CITY OF NEW YORK DEPARTMENT OF SANITATION,

Respondents/Defendants-Respondents.

BRIEF FOR *AMICI CURIAE*

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STATEMENT OF INTEREST OF *AMICI CURIAE* NEW YORK CITY ENVIRONMENTAL JUSTICE ALLIANCE, ORGANIZATION UNITED FOR TRASH REDUCTION & GARBAGE EQUITY, INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 813, AND CLEANUP NORTH BROOKLYN

Amici have a direct, substantive interest in Local Law 152's mandate that their communities no longer bear the burden of the City's trash. In the proceedings in the Supreme Court, New York County (the "IAS court"), *amici curiae* submitted an amicus brief and affidavit in support of Local Law No. 152 (2018) of the City of New York ("Local Law 152") and participated in the oral argument on the merits. The IAS court then relied on and cited *amici's* submission in rendering its decision now appealed. *Nat'l Waste & Recycling Ass'n v. City of New York*, No. 101686/2018, 2019 WL 4899040, at *7 (N.Y. Sup. Ct., N.Y. Oct. 4, 2019). The IAS court found that *amici* identified how Local Law 152 "addresses serious public health and safety concerns of residents who have suffered from increased air pollution." *Id*. In recognition of *amici's* role in the lower court, and indeed in the passage of Local Law 152, appellants have included *amici* in the caption of their brief.

The interests of the individual *amici* in this case are further set forth as follows:

NEW YORK CITY ENVIRONMENTAL JUSTICE ALLIANCE ("NYC-EJA") is a nonprofit network that has been linking grassroots

organizations from low-income neighborhoods and communities of color in their fights for environmental justice since 1991. NYC-EJA members who live and work in the communities Local Law 152 is designed to protect and who have been advocating for waste equity for decades include The POINT CDC, Youth Ministries for Peace and Justice, Nos Quedamos, UPROSE, and El Puente. These organizations and other NYC-EJA members see Local Law 152 as a crucial step towards relieving low-income communities of color of the environmental tragedy thrust upon them by decades of waste trucked into and processed in their neighborhoods at ever-increasing rates.

ORGANIZATIONS UNITED FOR TRASH REDUCTION AND GARBAGE EQUITY ("O.U.T.R.A.G.E.") is an environmental justice coalition of more than two dozen community and civic groups dedicated to trash equity and the reduction of waste transfer stations and waste truck traffic in the communities of Williamsburg and Greenpoint in Brooklyn. Since 1991, O.U.T.R.A.G.E. members have been advocating for a more equitable and sustainable solid waste management plan in the City of New York, specifically a plan that reduces the number of waste transfer stations in members' communities; reduces the capacity at these solid waste transfer stations; and mitigates the dangerous waste truck traffic and pollution these transfer stations invite to their neighborhood streets. The mission of O.U.T.R.A.G.E. is to secure environmental justice for the

Williamsburg and Greenpoint communities, where 40% of New York City's solid waste was processed prior to the enactment of Local Law 152.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 813 ("Teamsters Local 813") was chartered in 1951 by the International Brotherhood of Teamsters covering workers in the private sanitation industry. The union's sanitation members work in private sanitation, resource recovery, waste transfer station, and recycling station jobs. Because of the labor implications of this matter, Teamsters Local 813 has a substantial interest in its outcome. Furthermore, members of Teamsters Local 813 live and work in the overburdened community districts and so have an additional significant interest in the reduced truck traffic and reduced air pollution Local Law 152 provides.

CLEANUP NORTH BROOKLYN ("CNB") is a grassroots community organization composed of a diverse mix of residents, including parents, children, artists, manufacturing workers, and business owners. CNB advocates for clean air, safe streets, and fair employment in North Brooklyn, a neighborhood with mixed residential, industrial, and commercial uses. Central to CNB's mission is an understanding that North Brooklyn has been overburdened by poorly managed, privately owned waste transfer stations and concrete mixing plants that pollute and threaten community health. CNB advocates for policy changes that safeguard the health of North Brooklyn residents and allow the neighborhood to

once again be a safe place to walk, breathe, and live. Local Law 152 is one such policy, as it is targeted at relieving the public health burdens that North Brooklyn residents have shouldered for too long.

STATEMENT OF ISSUE ADDRESSED BY *AMICI CURIAE*

In 2006, the City of New York adopted a Solid Waste Management Plan ("SWMP") designed to address deep inequities in how solid waste is processed in the largest and densest city in the United States—in part, in response to outcry from the communities most impacted by solid waste processing in the City. As part of its efforts to redistribute the burdens of waste processing in a more equitable manner, the SWMP directed the City's Department of Sanitation ("DSNY") to negotiate with representatives of the solid waste management industry to see whether they could effect voluntary reductions in permitted transfer station capacity by 6,000 tons per day ("tpd"). Those negotiations failed, and no such voluntary reductions actually occurred. The SWMP foresaw that possibility, and expressly provided that if voluntary reductions of 6,000 tpd did not result, DSNY was to work with the City Council to enact legislation to reduce permitted transfer station capacity. The SWMP did not specify any cap on the extent of such legislated reductions. Appellants raise the question whether the SWMP prohibits Local Law 152, which reduces permitted transfer station capacity by more than 6,000 tpd. The IAS court correctly held that the SWMP does not prohibit Local Law 152.

PRELIMINARY STATEMENT

Of the 56 community districts in New York City, just four have long shouldered most of the burden of disposing of the City's waste. When Fresh Kills landfill closed, private truck-based transfer stations proliferated in communities of color and low-income communities. R. 2225-26 (Affidavit of Eddie Bautista, sworn to Apr. 1, 2019 ("Bautista Aff.") ¶¶ 12-15). These facilities compounded the problems of communities already disproportionately exposed to industrial pollution. R. 2226 (Bautista Aff. ¶¶ 14-15). For decades, members of these communities overburdened with truck-intensive waste transfer stations organized and advocated tirelessly for legislative relief.

In 2006, the New York City Council ratified the City's SWMP,[1] which provided a roadmap for establishing a more equitable waste management framework. The SWMP's long-term goals included mitigating the air, noise, and odor pollution and public health impacts from years of sending more than three-quarters of the City's garbage—and hundreds of diesel trucks each day—to those four community districts. *Amici* and their communities have advocated for reforms to the waste system, and specifically for capacity reduction as prescribed by Local

1. *See* Local Law No. 33 (2006) of City of New York § 1; *see also* R. 72-108 (providing excerpts of the SWMP).

Law 152, since before the adoption of the SWMP in 2006. When the City adopted the SWMP, it committed itself to that reform, with equity as a guiding principle.

However, it took years of discussions, several failed legislative initiatives, and a lack of progress before finally, twelve years after adoption of the SWMP, the City Council enacted Local Law 152 in 2018 with overwhelming support. Local Law 152 is the result of years of negotiations among the Mayor's Office, the Department of Sanitation, the City Council, community groups such as *amici*, the private waste transfer industry, and other stakeholders. By requiring transfer stations to reduce their permitted capacities by mandated percentages, it built on the goals and values established by the SWMP, and brought the SWMP's vision of more equitable apportionment of waste processing toward fruition. R. 710-711. Specifically, Local Law 152 requires each of the transfer stations located in the overburdened community districts (Brooklyn Community District 1, Queens Community District 12, and Bronx Community Districts 1 and 2) to reduce their waste capacity by thirty-three or fifty percent, depending on the district. *Id.* While Appellants seek to invalidate Local Law 152, asserting it "conflicts directly" with the SWMP, the SWMP expressly contemplated its passage. The SWMP provided that if the Appellants and other owners of transfer stations did not voluntarily reduce their permitted capacity by agreement within one year—which they did not

do (then, or ever)—DSNY would work with the City Council to enact local legislation to do so by law.

This brief in support of Local Law 152 is submitted on behalf of *amici curiae*, NYC-EJA, O.U.T.R.A.G.E., Local 813, and CNB (collectively, the "*amici*"), which represent the people who reside and work in the overburdened communities of North Brooklyn, the South Bronx, and Southeast Queens. These communities—to adopt the State's own terminology—are "environmental justice communities," *i.e.*, communities where the majority of residents are people of color or with low incomes, who bear a disproportionate share of polluting facilities and corresponding public health impacts.[2] *Amici* actively engaged in the democratic process for more than twelve years to bring into law this measure of environmental justice the 2006 SWMP promised them.

For the reasons set forth below, and by the City of New York in its brief, the Court should affirm the IAS court's decision and uphold Local Law 152.

THE HISTORY OF THE FIGHT FOR WASTE EQUITY AND LOCAL LAW 152

Waste Transfer Stations Severely Harm Overburdened Communities.

Amici are all too familiar with the public health hazards this law aims to curtail: the air pollution, street safety issues, and odors and irritants emanating

2. *See* N.Y. State Dep't of Envtl. Conservation Comm'r Policy 29, § III (A)(8), https://www.dec.ny.gov/regulations/36951.html; *see also* N.Y. ECL §1-0101.

from the fleets of diesel trucks dumping at multiple polluting waste transfer stations clustered in certain communities. With literally hundreds of diesel trucks barreling along these communities' streets daily, residents and workers suffer from dangerously low air quality from harmful emissions and particulate matter that increase their risk of health problems.

A 2018 study conducted by community advocates from El Puente de Williamsburg, a member of *amicus* NYC-EJA, in conjunction with the New School's Tishman Environmental and Design Center, found that the air around four parks and playgrounds in North Brooklyn contains harmful air particulate matter at levels four to six times higher than the maximum referenced in national air quality standards. R. 824-26 (Statement of Leslie Velasquez, Hearing on Int. No. 157-C Before New York City Council Comm. on Sanitation and Solid Waste Mgmt., 2018 Leg.).[3] The participants in the study counted trucks traveling through the neighborhood and found that an average of 218 trucks *per hour* pass by or idle beside the parks and playgrounds. *Id*. A similar study conducted only a few years earlier found that the amount of particulate matter in the air at one intersection in

3. For the full report, *see* Ivan J. Ramirez et al., TEDC Project Report: Fighting for Urban Environmental Health Equity in Southside Williamsburg, Brooklyn: A Pilot Study, NEW SCHOOL (2018), https://www.researchgate.net/publication/323628133_TEDC_Project_Report_Fighting_for_Urban_Environmental_Health_Equity_in_Southside_Williamsburg_Brooklyn_A_Pilot_Study.

North Brooklyn increased by 355% when transfer stations were operating, compared with when they were closed. Erin Durkin, *More Waste Trucks Clogging the Streets in Williamsburg and Greenpoint, Study Finds*, N.Y. DAILY NEWS (Nov. 16, 2011), https://www.nydailynews.com/new-york/brooklyn/waste-trucks-clogging-streets-williamsburg-greenpoint-study-finds-article-1.978738.

Residents of communities where truck-based transfer stations are clustered experience higher rates of asthma and respiratory illnesses than people in other sections of the City.

- In Williamsburg-Bushwick, residents ages 5 to 17 years old visited emergency health services for asthma at a rate of 327.2 visits per 10,000 residents in 2016, compared to a rate of only 215.3 visits per 10,000 residents city-wide.[4]
- Residents 18 years and older fare badly, too: adults in Williamsburg-Bushwick, Brooklyn Community District 1, visited emergency health services for asthma in 2016 at more than twice the city-wide rate (Adult residents of Williamsburg-Bushwick visited emergency health services for asthma at a rate of 206.8 visits per 10,000 residents in 2016, while the city-wide rate was merely 99.1 visits per 10,000 residents).[5]
- Similarly, in the Hunts Point and Mott Haven neighborhoods in Bronx Community Districts 1 and 2,

4. *See* City of New York, *Environment & Health Data Portal: Asthma Emergency Department Visits (Children 5 to 17 Yrs Old)*, http://a816-dohbesp.nyc.gov/IndicatorPublic/VisualizationData.aspx?id=2379,4466a0,11,Summarize.

5. *See* City of New York, *Environment & Health Data Portal: Asthma Emergency Department Visits (Adults)*, http://a816-dohbesp.nyc.gov/IndicatorPublic/VisualizationData.aspx?id=2380,4466a0,11,Summarize.

> residents of all ages visited emergency health services due to asthma at a rate of 591.8 per 10,000 residents in 2014.[6] This rate is nearly three times the national rate of emergency department visits due to asthma in 2014 of 202.4 per 10,000 residents.[7]

At a hearing on the bill that became Local Law 152, pediatrician and environmental health specialist Geoffrey "Cappy" Collins, MD, MPH, provided his expertise on the health impacts of waste transfer stations. He testified that trucks driving on their way to and from waste transfer stations in the South Bronx through East Harlem, where he treats families, increase the problem of asthma in children in that community:

> Asthma is a big problem. With higher rates in East Harlem than almost anywhere in the country. . . . [Parents] cannot control the garbage trucks idling on the streets, crisscrossing the streets and barreling up the avenues as they haul thousands of tons of waste per day through their neighborhood on route to disposal sites and other impoverished neighborhoods in the South Bronx. Combustion exhaust contains hydrocarbons, soot, ozone, and carcinogenic chemicals like benzine. It makes asthma worse. I can't prescribe a medication for this and families can't protect themselves from the polluted air they breathe.

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6. Jeremy Hindsdale, *By the Numbers: Air Quality and Pollution in New York City*, STATE OF THE PLANET, Columbia Univ. Earth Inst. (June 6, 2016), https://blogs.ei.columbia.edu/2016/06/06/air-quality-pollution-new-york-city/.

7. Centers for Disease Control and Prevention, *National Hospital Ambulatory Medical Care Survey: 2014 Emergency Department Summary Tables*, table 12, https://www.cdc.gov/nchs/data/nhamcs/web_tables/2014_ed_web_tables.pdf.

R. 860-61. Antonio Reynoso, who represented North Brooklyn in the City Council at the time and chaired the hearing, noted in the same hearing that, "[m]y district suffers from some of the highest asthma rates in the city, with Woodhull Hospital taking in the most emergency asthma cases of any [H]ealth and [H]ospitals facility in the city of New York." R. 768. As Dr. Collins concluded, "[l]imiting the maximum capacity at our waste transfer stations is a first step towards clean air." R. 861.

Impacted Community Members and the City Pushed for Waste Equity.

Since before the City's adoption of the SWMP in 2006, community organizations such as *amici* NYC-EJA and O.U.T.R.A.G.E. have been organizing, lobbying, protesting, and advocating for fairness in the way waste is processed in New York City. R. 2225-27 (Bautista Aff. ¶¶ 10-21). In 2001 and 2002, the Bloomberg administration had framed a waste plan based on "equity, environmental justice, and public health." R. 2228 (Bautista Aff. ¶ 24). In 2006, the Bloomberg administration hired Eddie Bautista, an environmental justice organizer,[8] as Director of City Legislative Affairs to address this environmental justice issue. R. 2227 (Bautista Aff. ¶ 22). Mayor Bloomberg's mandate to Mr. Bautista was clear: work with DSNY and the City Council to get an equity-

8. Bautista came from the world of community organizing and environmental justice, serving previously as Director of Community Planning and Organizing at New York Lawyers for the Public Interest. R. 2223 (Bautista Aff. ¶ 4).

focused SWMP through the City Council. R. 2228 (Bautista Aff. ¶ 24). The stage was finally set to pass legislative reform to reduce the amount of waste processed in the overburdened communities.

The City Council hearings that preceded approval of the SWMP made clear that one of the SWMP's fundamental goals was to create a more just waste management system for the City. According to the Chair of the Sanitation Committee at the time, "[r]eduction of transfer station permit and capacity in overburdened communities" should be one of the Council's "guiding principles" in crafting the SWMP. *See* Transcript of Hearing on the Draft SWMP, N.Y. City Council Comm. On Sanitation and Solid Waste Mgmt. (Jun. 26, 2006), https://legistar.council.nyc.gov/View.ashx?M=F&ID=667150&GUID=64FD15CC-EC77-4E86-A364-90F5561CDB2C (the "SWMP Hearings"), at 10:13-11:9. Committee Chairman Michael McMahon explained that he knew "too well the ramifications of the failures of the City's refusal to grapple with its garbage [fairly]. . . . Noxious odors, dust, truck traffic with its concomitant road congestion and toxic emissions, the breaking of a community's morale and civic pride, are just some of the sins the City continues to visit on a few unfortunate districts[.]" *Id.* at 9:9-16. Similarly, according to the then-Commissioner of DSNY, John Doherty, "[m]ost importantly, approval of this plan will bring relief to the communities in this City that are now burdened by the City's interim waste management system."

Id. at 18:19-22; *see also id.* at 13:10-15 (One of the two "critical objectives of the proposed plan," according to Doherty, was to "equitably distribute transfer station facilities throughout the five boroughs"). Both the administration and the Council were equally clear that the SWMP was designed to reduce the burden of the waste processing system on the disproportionately affected community districts processing most of the City's waste. R. 2228 (Bautista Aff. ¶¶ 22, 24-25).

Representatives from groups advocating for the overburdened communities also testified at the SWMP Hearings. Testifying on behalf of the Organization of the Waterfront Neighborhoods ("OWN") coalition, a senior staff attorney from New York Lawyers for the Public Interest explained that OWN "has been engaged in the garbage equity struggle for over ten years and we're really thrilled to be here today, and to see this day as the solid waste management plan seems to be moving forward, and that OWN communities may finally get relief from the 80 percent of the garbage—of the City's garbage that passes through the land-based transfer stations in the outer boroughs." *See* Testimony of Veronica Eady, Senior Staff Attorney, New York Lawyers for the Public Interest, SWMP Hearing Transcript (Jun. 26, 2006) at 166:14-22. As Jae Watkins, then the Environmental Justice Program coordinator for UPROSE (a member of *amicus* NYC-EJA), testified, "[o]ur priority for the SWMP is to ensure real capacity reduction in over-bur[de]ned communities; to include the [marine transfer stations]

facilities at West 59th Street and East 91st Street in Manhattan, and to pass this plan with these essential elements, immediately." *Id.* at 203:3-8.

The City Adopted the SWMP.

To address the longstanding inequitable distribution of waste management, the City adopted the SWMP. R. 99-100 (SWMP 4.4.1); R. 2228 (Bautista Aff. ¶ 24). One of the cornerstone proposals in the SWMP was the retrofitting of marine transfer stations ("MTSs") to be used as less truck-intensive and more equitably-sited facilities to process the City's garbage, which would in turn reduce reliance on the truck-based transfer stations sited in the overburdened communities. R. 84 (SWMP Executive Summary); R. 95 (SWMP 4.3.1.1, 4.3.1.2); R. 102-03 (SWMP 4.4.4). The SWMP envisions that, as these marine transfer stations open and bring more capacity online, the private facilities clustered together in environmental justice communities would not have to process as much waste:

> The reopening of the MTSs will have the effect of creating significant new putrescible capacity for the City in areas that do not have large numbers of transfer stations. DSNY proposes to explore ways to reduce the daily permitted putrescible capacity in the communities with the greatest concentration of transfer stations as new putrescible transfer station capacity becomes available under the City's new long-term waste export plan. Specifically, DSNY will reduce the Citywide, lawfully permitted putrescible and construction and demolition (C&D) transfer capacity by up to 6,000 tpd (up to 4,000 tons of putrescible capacity and up to 2,000 tons of C&D

> capacity) through reductions in the capacity of community districts Bronx 1, Bronx 2, Brooklyn 1 and Queens 12 (the "relevant community districts") as the city-owned MTSs become operational.

R. 102 (SWMP 4.4.4). Thus, reducing the private facilities' permitted capacity would be both feasible and advantageous to reduce the number of trucks in the overburdened communities and, in turn, the harsh effects of those trucks on the residents.

To achieve these reductions, the SWMP directs that "within three months of the Council's adoption of the SWMP, DSNY, in cooperation with the Council, will commence negotiations with representatives of the solid waste management industry to seek voluntary reductions in permitted transfer station capacity." *Id*. at 103. However, if those negotiations were not successful within a year, the SWMP expressly authorized the Council to legislate capacity reductions in the overburdened communities:

> Should these negotiations fail to result in agreed-upon capacity reductions by April 1, 2007, DSNY will work with the Council to draft legislation to accomplish reductions in permitted transfer station capacity.

Id.

The SWMP prescribed no limitation on the reductions the Council could mandate by law. The history of the SWMP, and the language of the SWMP

itself, are clear that reduction of transfer station capacity in the overburdened communities was central to the City's waste management reform.

The City Passed Local Law 152 to Achieve Waste Disposal Equity.

The 2006 SWMP provided the City with the blueprint to handle its waste moving forward, with equity as a paramount principle. Yet twelve years after the City adopted the SWMP, DSNY had failed to achieve tangible progress to reduce transfer station capacity in the overburdened communities. *Amici* and their communities called on the City Council to follow through on the commitment in the SWMP to pass legislation to reduce permitted capacity in the overburdened communities.

Five years after the City adopted the SWMP and four years after the 2007 deadline for voluntary capacity reductions had lapsed, Council Member Diana Reyna introduced the first version of the waste equity bill, City Council Intro. 1170 of 2011, which sought an 18% reduction in throughput in the overburdened communities. *See* R. 2229 (Bautista Aff. ¶ 29). Transfer station owners opposed that bill,[9] and it never came to a vote. *See id.*

In 2013, with the change in administration, there was a renewed effort by Council Member Reyna's successor in North Brooklyn, Antonio Reynoso, to

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9. *See, e.g.*, R. 357-58 (Testimony of David Biderman, General Counsel for the Nat'l Solid Wastes Mgmt. Ass'n, Intro. 1170 Hearing Before City Council Comm. on Sanitation and Solid Waste Mgmt. (Oct. 25, 2013)).

obtain real relief. *See* R. 2229-230 (Bautista Aff. ¶¶ 30-32). In October 2014, Council Member Reynoso reintroduced a waste equity bill as Intro. 495. *Id.* The bill was referred to the Committee on Sanitation and Solid Waste Management, which held a hearing in February 2015.

In the Bronx, in December of 2016, dozens of local residents gathered in freezing temperatures to urge support for the legislation. Joe Hirsch, *Bronxites to City: Slash Our Trash*, MOTT HAVEN HERALD (Jan. 2, 2017), https://www.motthavenherald.com/2017/01/02/bronxites-to-city-slash-our-trash/. The bill was expected to pass over the opposition of the private waste industry,[10] but failed after the last-minute withdrawal of support by a key co-sponsor. Cole Rosengren, *NYC Transfer Station Reduction Bill Dies in Last-minute Negotiations*, WASTE DIVE (Dec. 19, 2017), https://www.wastedive.com/news/nyc-transfer-station-reduction-bill-dies-in-last-minute-negotiations/513369/.

The fight was not over though, and continued advocacy by *amici* and their partners spurred continuing efforts to enact the waste equity law that the SWMP contemplated. In January 2018, Council Member Reynoso introduced Intro. 157. Residents of Southeast Queens gathered to demonstrate their support

10. *See, e.g.*, R. 565-67 (Testimony of David Biderman, General Counsel & Vice President for the Government Affairs at the Nat'l Solid Waste & Recycling Ass'n, Intro. 495 Hearing Before City Council Comm. on Sanitation and Solid Waste Mgmt. (Feb. 13, 2015)).

for this version of the waste equity bill.[11] At the Council hearing in June 2018, dozens of community members lined up to ask the Council to pass Intro. 157:

- A North Brooklyn resident and representative of amicus O.U.T.R.A.G.E., Rolando Guzman, testified before the Council calling the clustering of waste transfer stations and truck traffic in his community "an environmental tragedy." R. 863.

- The founder of *amicus* CNB, Jen Chantrtanapichate, testified that the smells emitted from the transfer stations and trucks in North Brooklyn are so bad that "families can't open their windows" and "kids living nearby can't go outside and play." R. 829. "[C]apping the amount of waste for overburdened neighborhoods," Ms. Chantrtanapichate explained, "will significantly improve the severe environmental harms" that the North Brooklyn communities have "been dealing with for over 20 years." *Id*.

- A representative of the private sanitation workers of *amicus* Teamsters Local 813, James Curbeam, testified that "[t]he Teamsters care about the environment and the justice because of our members do not just work in these communities but they live there to[o]. Our kids deserve a better future." R. 854.

- Teg Sethi, member of *amicus* CNB and resident of Bushwick, explained: "[t]hree times this community organized and fought to no avail, ignored by two different administrations and ten years ago, the station was taken over by the worst of the worst of operators and the community has suffered the consequences." R. 826.

11. *See* Naeisha Rose, *Waste equity debate rages on in St. Albans*, QUEENS NEWS & COMMUNITY (May 15, 2018), https://qns.com/story/2018/05/15/waste-equity-debate-rages-on-in-st-albans/.

– Danny Peralta, executive director of *amicus* THE POINT Community Development Corporation in Hunts Point in the South Bronx testified, "[w]e are one of the most environmentally overburdened districts in the community in all of New York City. The biggest contributors obviously to this is the pollution that comes from the waste industry. . . . we feel like Intro 157 is long overdue." R. 870-71.

In July 2018, decades of community and advocate outcry over the inequitable distribution of waste facilities finally paid off: the New York City Council overwhelmingly passed Intro. 157 and Mayor Bill de Blasio signed it into law as Local Law 152. Local Law 152 represented not only a response to this outcry, but also the fulfillment of a promise made in the SWMP twelve years earlier.

ARGUMENT

I. The SWMP Specifically Authorizes and Anticipates Local Law 152.

Contrary to Appellants' argument, Local Law 152 does not conflict with the State-approved SWMP. *See* Brief for Petitioners/Plaintiffs-Appellants ("Appellants Br.") at 39.[12] In fact, the SWMP expressly authorizes the passage of legislation—like Local Law 152—to reduce permitted transfer station capacity in

12. Pursuant to Environmental Conservation Law § 27-0107, State law authorized the City to create a solid waste management plan. In 2006, the City Council passed Local Law 33, granting authority for the submission of the SWMP to the New York State Department of Environmental Conservation for approval. Local Law No. 33 (2006) of City of New York § 1. That same year, the Department approved the SWMP. R. 73-74.

the overburdened communities if "negotiations fail to result in agreed-upon capacity reductions," as they did. R. 103 (SWMP 4.4.4).

DSNY's negotiations with the solid waste management industry were not "successful," contrary to Appellants' contention. *See* Appellants' Br. at 8. Transfer stations did not voluntarily reduce capacity by April 1, 2007—or anytime thereafter. *See* R. 2228 (Bautista Aff. ¶ 27); R. 143-44 (Testimony of Robert Orlin, Intro. 1170 Hearing Before City Council Comm. on Sanitation and Solid Waste Mgmt. (Oct. 25, 2013) ("Intro. 1170 Hearing")) (confirming that "the industry didn't want to agree to reductions and then take the chance that the Council would then pass more significant reductions later on," and that, ultimately, "there were no actions taken" to reduce capacity in the transfer stations after the 2006 negotiations). Thus, as directed by the SWMP, the City Council passed long-overdue legislation—Local Law 152—to fulfill the SWMP's promise of reform.

Appellants cite former DSNY Commissioner Doherty's testimony presented to the City Council Committee on Sanitation and Solid Waste Management referring in the most vague terms to "oral agreements," but that same testimony, even if credited, also states that the City did not "pursue" those purported oral agreements. *See* Appellants' Br. at 8, 40-41, 43-44; *see also* R. 342 (Testimony of John J. Doherty, Intro. 1170 Hearing). Thus, the evidence on which Appellants rely confirms that the transfer stations did not in fact voluntarily reduce

capacity as contemplated by the SWMP. That outcome cannot be characterized as "successful."

Furthermore, Appellants do not cite any evidence of the terms of or parties to any such oral agreement, even if one could be binding.[13] Nor do Appellants offer any evidence of a written agreement in the seven affidavits that they submitted to the IAS court. Nor do they provide any evidence that any of the transfer station owners in fact voluntarily reduced their permitted capacity, either by seeking an amendment to an existing permit or at the time of permit renewal, or that there was any attempt to enforce these supposed oral agreements by the City. In the absence of any such agreement or evidence of unilateral reductions by the owners of the transfer stations, the City Council fulfilled its mandate under the SWMP and enacted Local Law 152. In sum, Appellants simply fail to prove that the voluntary agreements to reduce transfer station permitted capacity ever came to pass.

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13. An oral agreement that cannot be performed within a year is barred by the statute of frauds. *Sheehy v. Clifford Chance Rogers & Wells LLP*, 3 N.Y.3d 554, 559-60, 822 N.E.2d 763, 765 (2004). Here, any reduction in transfer station permitted capacity under the SWMP would be effective for multiple years. Accordingly, an oral agreement on such reduction cannot be performed within a year, and therefore, is void as a matter of law. *Id.*; *Hamburg v. Westchester Hills Golf Club, Inc.*, 96 A.D.3d 802, 803, 946 N.Y.S.2d 228, 229 (2d Dep't 2012) (alleged oral agreement between the parties was incapable of performance within one year and was, therefore, barred by the statute of frauds).

II. Local Law 152's Reduction of Transfer Station Capacity Does Not "Conflict Directly" With the SWMP.

Far from preempting Local Law 152, the SWMP actually authorizes its passage. Thus, Appellants' argument that Local Law 152 "conflicts directly" with the SWMP because it requires reductions of transfer station capacity by more than 6,000 tpd (*see* Appellants' Br. at 45-47) and is subject to "conflict pre-emption" (*id.* at 47-53) fails.

Conflict preemption occurs "where local laws prohibit what would be permissible under State law, or impose prerequisite additional restrictions on rights under State law, so as to inhibit the operation of the State's general laws." *Id*. at 50 (quoting *Patrolman's Benev. Ass'n of City of New York, Inc. v. City of New York*, 142 A.D.3d 53, 77, 752 N.Y.S.2d 665, 672 (1st Dep't 2016)). The Court of Appeals has "cautioned that reading conflict preemption principles too broadly risks rendering the power of local governments illusory." *Garcia v. New York City Dep't of Health and Mental Hygiene*, 31 N.Y.3d 601, 617, 106 N.E.3d 1187, 1200 (2018) (citation omitted). The "fact that both the State and local laws seek to regulate the same subject matter does not in and of itself give rise to an express conflict." *Id.* (internal quotation marks and citation omitted). Appellants do not—and cannot—demonstrate that Local Law 152 either prohibits what is otherwise expressly allowed under State law or imposes restrictions that inhibit the operation of the State's general laws.

First, unlike instances where conflict preemption arises, Local Law 152 does not prohibit what the State-approved SWMP allows. As an initial matter, New York State's Solid Waste Management Act of 1998, N.Y. ECL § 27-0106(2) ("SWMA"), explicitly grants authority to municipalities to enact supplementary local sanitation and solid waste regulation, and unambiguously grants primary responsibility for waste management to localities such as New York City: "the basic responsibility for the planning and operation of solid waste management facilities remains with local governments, and the state provides necessary guidance and assistance."

In addition, the SWMP's "framework and principles" belie Appellants' claim. The SWMP's Executive Summary "attempts to" "[t]reat each borough fairly" by recognizing that "responsibility for the City's waste management system should be allocated equitably throughout the City[.]" R. 76. That principle is echoed in the introduction to Chapter 4 of the SWMP, which provides a number of goals related to reducing the waste and pollution in overburdened communities, including goals to:

- "Strengthen the regulations pertaining to the siting of new transfer stations and to disallow a net increase in capacity in those [community districts] that already have the greatest number of such facilities;"
- "Hold privately owned waste transfer stations to higher operations standards, thereby reducing the impacts of these facilities;"

- "Identify the best means of reducing putrescible transfer station capacity in the two or three communities with the greatest concentration of transfer stations as the [c]onverted [marine transfer stations] become operational;" and

- "Reduce the impacts on those communities that are along truck routes leading to transfer stations by evaluating routing options."

R. 99-100 (SWMP 4.4.1); *see also* SWMP Hearing Transcript at 10:13-11:9. Thus, reduction of capacity in the overburdened communities—whether by 6,000 tpd or more—is consistent with a central tenet of the SWMP: equity in waste management.

Importantly, the section of the SWMP on which Appellants rely simply does not support their contention. *See* Appellants' Br. 43-44. While Section 4.4.4 of the SWMP directs DSNY to attempt to negotiate voluntary transfer station capacity reductions by up to 6,000 tpd, it provides no limitation whatsoever on capacity reductions enacted by the Council "[s]hould these negotiations fail," as they did. *See* R. 103 (SWMP 4.4.4). The SWMP states only that the "DSNY will work with the Council to draft legislation to accomplish reductions in permitted transfer station capacity." *Id*. Thus, nothing in the SWMP—or anywhere else—limits *the Council's* authority to reduce transfer station capacity amounts by more than 6,000 tpd. *Id*.

Nor does the SWMP contain any indication that the contemplated voluntary reduction of transfer station capacity by up to 6,000 tpd implied a policy judgment that any greater reduction would harm competing interests. To the contrary, when the State approved the City's SWMP in 2006, it thereby also authorized further local legislation to achieve the SWMP's stated goals without providing for any maximum reduction. R. 103 (SWMP 4.4.4). Accordingly, far from preempting Local Law 152, the State endorsed the very objectives achieved by that City law. *See, e.g.*, *Vatore v. Comm'r of Consumer Affairs of City of New York*, 83 N.Y.2d 645, 650, 634 N.E.2d 958, 960 (1994) (citing *Jancyn Mfg. Corp. v. County of Suffolk*, 71 N.Y.2d 91, 97-99, 518 N.E.2d 903, 906-907 (1987)) (finding no preemption "particularly where . . . the local law would only further the State's policy interests."); *see also City of New York v. Job-Lot Pushcart*, 88 N.Y.2d 163, 170, 666 N.E.2d 537, 541 (1996) (finding no preemption and noting that "compliance with both the Federal and local laws at once furthers the intent of Congress and achieves the public safety objective underlying each measure").

Second, Local Law 152 does not "impose prerequisite additional restrictions" on any of Appellants' rights under State law. *See* Appellants' Br. at 50. The SWMP did not grant transfer station owners the right to maintain capacity at any particular level; it provided them the opportunity to voluntarily reduce their capacity within one year. As previously noted, no reductions were made.

The First Department's recent decision in *Center for Independence of Disabled v. Metropolitan Transportation Authority*, 184 A.D.3d 197, 125 N.Y.S.3d 697 (1st Dep't 2020), is instructive. In that case, state law provided "for 100 specifically designated [subway] stations to be made accessible to persons with disabilities by July 2020." *Center for Independence of Disabled*, 184 A.D.3d at 203, 125 N.Y.S3d at 705. The First Department held that a local law did not conflict with, and was not preempted by, that state law where it increased the number of disability accessible subway stations beyond the amount required by the state law. *Center for Independence of Disabled*, 184 A.D.3d at 203-204, 125 N.Y.S3d at 705-06. The Court noted that the state law merely established a "base line," it did not set any limit on the number of accessible subway stations. *Center for Independence of Disabled*, 184 A.D.3d at 205, 125 N.Y.S3d at 706. Similarly, here, the language of the SWMP does not prohibit the City from reducing permitted transfer station capacity by more than 6000 tpd in the overburdened communities. And, as in *Center for Independence of Disabled*, the state-approved law (the SWMP) "was never intended to be the final word" on transfer station capacity reductions. *See Center for Independence of Disabled*, 184 A.D.3d at 206, 125 N.Y.S3d at 707.

Appellants cite only inapposite cases. *See* Appellants' Br. at 50-53. In each of those cases, unlike here, the city law narrowed rights expressly provided

by state law. In *Lansdown Entertainment Corp. v. New York City Department of Consumer Affairs*, 74 N.Y.2d 761, 764-65, 543 N.E.2d 725, 729 (1989), the court held that the city law prohibiting patrons from remaining at cabarets past 4:00 a.m. directly conflicted with the state law, which granted patrons the right to stay until 4:30 a.m.[14] In *New York City Health & Hospitals Corp. v. Council of City of New York*, 303 A.D.2d 69, 78-79, 752 N.Y.S.2d 665, 670 (1st Dep't 2003), the Court found that the "inconsistency" between city and state law "impose[d] prerequisite additional restrictions on [Plaintiff's] rights under state law." *Id.* (explaining that since the state law provided that New York City Health and Hospitals Corporation has "complete autonomy over personnel qualifications," the city law imposing additional requirements for personnel was preempted). In *Council of City of New York v. Bloomberg*, 16 A.D.3d 212, 213-14, 791 N.Y.S.2d 107, 109, the local law narrowed rights by "expressly exclud[ing] a class of potential bidders" for city contracts, thereby "run[ing] afoul of the policy underlying" state law, which aimed to eliminate "favoritism, improvidence, fraud and corruption[.]"

As discussed above, the SWMP did not grant transfer station owners, individually or collectively, any right to maintain or retain any specific capacity. It

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14. Further, the court invalidated the city law on grounds of field preemption, not conflict preemption, noting that because the state had indicated an intent to "occupy [the] entire field of regulation" the city law would be preempted even if it duplicated the terms of the State law. *Lansdown Entertainment Corp.*, 74 N.Y.2d at 765, 543 N.E.2d at 780.

did, however, warn transfer station owners that the City was authorized to reduce their capacities if they did not agree to reduce them voluntarily. Further, unlike the state laws in the cases cited by Appellants, here, the state law triggered the passage of the local law: in passing the SWMA and approving the SWMP, New York State expressly directed the City Council to draft legislation aimed to reduce waste transfer station capacity in the overburdened communities if voluntary reductions did not occur by 2007. R. 103 (SWMP 4.4.4).

Similarly, the State laws in the cases cited by Appellants did not delegate to the City the authority to address the subject matter at issue in those cases, *i.e.*, the hours in which cabaret establishments can operate, the types of employees hospitals must hire, and the vendors the city may consider for contracts. Here, the State's SWMA expressly provides that primary responsibility over solid waste management facilities remains with local governments, providing "continuing assurance that the State has not preempted local legislation of issues related to municipal solid waste management." *Matter of MVM Constr., LLC v. Westchester Cnty. Solid Waste Comm'n*, 162 A.D.3d 1036, 1039, 81 N.Y.S.3d 67, 71 (2d Dep't 2018); *accord* N.Y. ECL § 27-0106(2).[15] As long as local regulations

15. New York courts consistently interpret the Environmental Conservation Law to encourage rather than preempt local waste regulation. *See Town of Concord v. Duwe*, 4 N.Y.3d 870, 873, 832 N.E.2d 23, 24-25 (2005) ("[L]ocal laws governing municipal solid waste management broader than—but consistent with—the state legislation are explicitly permitted

meet "the minimum applicable requirements set forth in any rule or regulation promulgated pursuant to [the SWMA]," courts will uphold them. N.Y. ECL § 27-0711; *see Syracuse Haulers Waste Removal, Inc. v. Madison Cnty. Dep't of Solid Waste and Sanitation*, 122 A.D.3d 969, 971, 995 N.Y.S.2d 820, 822 (3d Dep't 2014). As the Appellate Division has noted, "pursuant to ECL 27-0711, local laws governing municipal solid waste management and recycling that are stricter than the state legislation, but not inconsistent with it, are explicitly permitted." *Syracuse Haulers Waste Removal, Inc.*, 122 A.D.3d at 969, 995 N.Y.S.2d at 822. Local Law 152 is one such law.

When the State approved New York City's current SWMP in 2006, it endorsed the City's solid waste management strategy and authorized efforts to achieve the SWMP's stated goals. As discussed above, the State-approved SWMP unambiguously sets forth the City's intent to reduce permitted capacity at transfer stations in overburdened communities, through legislation if necessary. R. 102-03 (SWMP 4.4.4). Accordingly, there is no direct conflict between Local Law 152 and any State law.

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by the Environmental Conservation Law."); *Monroe-Livingston Sanitary Landfill, Inc. v. Caledonia*, 51 N.Y.2d 679, 683-84, 417 N.E.2d 78, 80 (1980) (holding that Article 27 "speaks specifically, not of the preclusion, but rather the inclusion of local government in the planning and control of problems endemic to waste management").

CONCLUSION

Local Law 152 is the product of years of grassroots community advocacy and an effective democratic process. The SWMP provided a vision of a waste management system guided by equity, and made a promise to those communities most burdened by decades of inequity in New York City'shous waste processing system. Local Law 152 represents the first step towards keeping the SWMP's promise. *Amici* ask the Court to uphold Local 152 and affirm the IAS court's decision.

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NOTICE OF APPEAL

AND

ORDER APPEALED FROM

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

THE NATIONAL WASTE & RECYCLING ASSOCIATION; CITY RECYCLING CORP.; EMPIRE RECYCLING SERVICES, LLC; HI-TECH RESOURCE RECOVERY, INC.; METROPOLITAN TRANSFER STATION, INC.; RAFAEL BATISTA; and WILLIAM MACKIE, Appellants/Petitioners-Plaintiffs, - against - THE CITY OF NEW YORK; BILL de BLASIO IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF NEW YORK; THE CITY COUNCIL OF THE CITY OF NEW YORK; NEW YORK CITY DEPARTMENT OF SANITATION; and KATHRYN GARCIA IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE CITY OF NEW YORK DEPARTMENT OF SANITATION, Respondents/Respondents-Defendants.	Index No. 101686/2018 Hon. Verna L. Saunders **NOTICE OF APPEAL**

PLEASE TAKE NOTICE, that Appellants/Petitioners-Plaintiffs the National Waste & Recycling Association, City Recycling Corp., Empire Recycling Services, LLC, Hi-Tech Resource Recovery, Inc., Rafael Batista, and William Mackie, by their attorneys Beveridge & Diamond, PC, hereby appeal to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, from the Decision and Order on Motion dated October 3, 2019, and entered in the above-titled action on October 7, 2019, of which the within is a true copy, which granted Respondents/Respondents-Defendants' Motion to Dismiss the Complaint in its entirety.

This appeal is taken from the entirety of the Decision and Order granting Respondents/Respondents-Defendants' Motion to Dismiss the Complaint.

Dated: November 6, 2019
New York, New York

BEVERIDGE & DIAMOND, PC

By: _____

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Supreme Court of the State of New York
Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

THE NATIONAL WASTE & RECYCLING ASSOCIATION; CITY RECYCLING CORP.; EMPIRE RECYCLING SERVICES, LLC; HI-TECH RESOURCE RECOVERY, INC.; METROPOLITAM TRANSFER STATION, INC. RAFAEL BATISTA; and WILLIAM MACKIE, Appellants/Petitioners-Plaintiffs,

- against -

THE CITY OF NEW YORK; BILL DE BLASIO IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF NEW YORK; THE CITY COUNCIL OF THE CITY OF NEW YORK; NEW YORK CITY DEPARTMENT OF SANITATION; and KATHRYN GARCIA IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE CITY OF NEW YORK DEPARTMENT OF SANITATION, Respondents/Respondents-Defendants.

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- ☐ Civil Action
- ☐ CPLR article 75 Arbitration
- ☒ CPLR article 78 Proceeding
- ☐ Special Proceeding Other
- ☐ Habeas Corpus Proceeding

Filing Type

- ☒ Appeal
- ☐ Original Proceedings
  - ☐ CPLR Article 78
  - ☐ Eminent Domain
  - ☐ Labor Law 220 or 220-b
  - ☐ Public Officers Law § 36
  - ☐ Real Property Tax Law § 1278
- ☐ Transferred Proceeding
  - ☐ CPLR Article 78
  - ☐ Executive Law § 298
- ☐ CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☒ Administrative Review	☐ Business Relationships	☐ Commercial	☐ Contracts
☒ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☒ Statutory	☐ Taxation	☐ Torts

Appeal	
Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	■ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
☐ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☐ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: New York
Dated: 10/03/2019	Entered: 10/7/2019
Judge (name in full): Hon. Verna L. Saunders, JSC	Index No.: 101686/2018
Stage: ☐ Interlocutory ■ Final ☐ Post-Final	Trial: ☐ Yes ■ No If Yes: ☐ Jury ■ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ☐ Yes ■ No
If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Appeal from the entirety of the Decision and Order on Motion, entered October 7, 2019 (Saunders, J.), granting Respondents-Defendants' Motion to Dismiss the Complaint in its entirety.

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

1. Whether the court below erred in dismissing the Article 78 Petition and Complaint where the City of New York's ("City") adoption of Local Law 152 was arbitrary, capricious, and an abuse of discretion based on the City's substantive and procedural violations of New York State Environmental Quality Review Act ("SEQRA") and City Environmental Quality Review ("CEQR") requirements?

2. Whether the court below erred in dismissing the Article 78 Petition and Complaint where the City impermissibly segmented its environmental review of Local Law 152 from the Commercial Waste Zones plan in violation of SEQRA and CEQR?

3. Whether the court below erred in dismissing the Article 78 Petition and Complaint where Local Law 152 directly conflicts with the City's Solid Waste Management Plan ("SWMP") and the City did not modify the SWMP before Local Law 152's enactment, constituting an error in law in violation of CPLR 7803(3)?

Continued on page 5 of the Information Statement.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	The National Waste & Recycling Association	Petitioner	Appellant
2	City Recycling Corp.	Petitioner	Appellant
3	Empire Recycling Services, LLC	Petitioner	Appellant
4	Hi-Tech Resource Recovery, Inc.	Petitioner	Appellant
5	Metropolitan Transfer Station, Inc.	Petitioner	None
6	Rafael Batista	Petitioner	Appellant
7	William Mackie	Petitioner	Appellant
8	The City of New York	Respondent	Respondent
9	Bill de Blasio, in His Official Capacity as Mayor of the City of New York	Respondent	Respondent
10	The City Council of the City of New York	Respondent	Respondent
11	New York City Department of Sanitation	Respondent	Respondent
12	Kathryn Garcia, in Her Official Capacity as Commissioner of the City of New York Department of Sanitation	Respondent	Respondent
13	New York City Environmental Justice Alliance	Nonparty	Amicus Curiae
14	Organization United for Trash Reduction & Garbage Equity (O.U.T.R.A.G.E.)	Nonparty	Amicus Curiae
15	International Brotherhood of Teamsters Local 813	Nonparty	Amicus Curiae
16	Cleanup North Brooklyn	Nonparty	Amicus Curiae
17			
18			
19			
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Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

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Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1-4, 6-7			
Attorney/Firm Name: James B. Slaughter, Beveridge & Diamond, PC			
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Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ■ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1-4, 6-7			
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Address: 100 Church Street			
City: New York	**State:** NY	**Zip:** 10007	**Telephone No:** (212) 356-2184
E-mail Address: rmartin@law.nyc.gov			
Attorney Type: ☐ Retained ☐ Assigned ■ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 8-12			
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Address: 151 West 30th Street, 11th Floor			
City: New York	**State:** NY	**Zip:** 10001	**Telephone No:** (212) 244-2664
E-mail Address: miachan@nylpi.org			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 13-16			
Attorney/Firm Name: Michael E. Salzman, Theodore Mayer, and Julie Amadeo, Hughes Hubbard & Reed LLP			
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Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 13-16			
Attorney/Firm Name:			
Address:			
City:	**State:**	**Zip:**	**Telephone No:**
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

4. Whether the court below erred in dismissing the Article 78 Petition and Complaint where Local Law 152 is preempted by New York law because it conflicts with standards for compliance with an approved SWMP, with New York State Department of Environmental Conservation ("NYSDEC") permit regulations, and with the NYSDEC-issued Part 360 permits issued to waste transfer stations?

5. Whether the court below erred in dismissing the Article 78 Petition and Complaint where Local Law 152 violates Appellants' substantive due process rights because the City acted arbitrarily and capriciously and deprived transfer station owners of their property interests arising from their vested rights in their permits?

6. Whether the court below erred in dismissing the Article 78 Petition and Complaint where Local Law 152 is unconstitutionally vague in that it does not provide clear standards for enforcement by the City Department of Sanitation or give transfer station owners fair notice of prohibited conduct, and in finding that certain facial vagueness allegations are not ripe for judicial review?

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. VERNA L. SAUNDERS** **PART** **IAS MOTION 5**

Justice

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INDEX NO. 101686/2018

MOTION SEQ. NO. 001 002 003

THE NATIONAL WASTE & RECYCLING ASSOCIATION, CITY RECYCLING CORP., EMPIRE RECYCLING SERVICES, LLC, HI-TECH RESOURCE RECOVERY, INC., METROPOLITAN TRANSFER STATION, INC., RAFAEL BATISTA, and WILLIAM MACKIE,

Petitioners-Plaintiffs,

- v -

THE CITY OF NEW YORK, BILL DE BLASIO IN HIS CAPACITY AS MAYOR OF THE CITY OF NEW YORK, THE CITY COUNCIL OF THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SANITATION, and KATHERINE GARCIA IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE CITY OF NEW YORK DEPARTMENT OF SANITATION,

Respondent-Defendants.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 90, 91, 92, 93, 94, 102, 103, 105

were read on this motion to/for **ARTICLE 78**.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39, 40, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 87, 88, 89

were read on this motion to/for **DISMISS**.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 82, 83, 84, 85, 86, 101

were read on this motion to/for **LEAVE TO FILE AMICUS BRIEF**.

Petitioners-plaintiffs (hereinafter "petitioners") commenced this action by complaint and petition, pursuant to Article 78 of the CPLR, challenging Local Law 152 arguing, in sum and substance, that Local Law 152 was adopted in violation of the New York State Environmental Quality Review Act (SEQRA) and the City Environmental Quality Review Act (CEQRA). Petitioners assert that respondent-defendants failed to assess the potential socioeconomic impacts to the transfer station industry, that Local Law 152 is unconstitutionally vague, violates due process under the Fourteenth Amendment, and is preempted by state law.[1]

Respondent-defendants, the City of New York, Bill de Blasio in his official capacity as Mayor of the City of New York, the City Council of the City of New York, New York City Department of

[1] Petitioners seeks an order annulling Local Law 152 and declaring that Local Law 152 was enacted in violation of SEQEA and CEQRA; that it is arbitrary and capricious; that it impermissibly conflicts with New York State Department of Environmental Conservation's solid waste management regulations; and that it violates petitioners' due process rights.

Sanitation and Kathryn Garcia in her official capacity as Commissioner of the City of New York Department of Sanitation, (collectively "City") move to dismiss the verified petition and complaint pursuant to CPLR § 3211(a)(1) and (a)(7).

In an environmental review action, a court must determine whether the determination was made in violation of a lawful procedure, affected by an error or law, was arbitrary and capricious, or was an abuse of discretion. The court is not to substitute judgment or "weigh the desirability of any action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA." (*Jackson v NY State Urban Dev. Corp.*, 67 NY2d 400 [1986]). What the court may do is determine whether the procedure was lawful and whether the agency identified relevant areas of environmental concern, took a "hard look" at them, and made a reasoned elaboration of the basis of its determination. (*Id*, citing *Aldrich v Pattison*, 107 AD2d 258 [2d Dept 1985] and *Coalition against Lincoln W., Inc. v New York*, 94 AD2d 483 [1st Dept 1983]).

The New York City Council passed Local Law 152 on July 18, 2018. It was approved by the Mayor on August 16, 2018.[2] Local Law 152 provides for a reduction in waste transfer station capacity in communities having the highest concentration of transfer stations.[3] The law was born out of concerns regarding the heavy truck traffic at these transfer stations resulting in residents of the affected communities being at a higher risk of hazards, such as increased health risks from truck emissions.[4] The City prepared an Environmental Assessment Statement (EAS), pursuant to SEQRA and CEQRA, to determine whether Local Law 152 would have an adverse effect on the environment. The EAS determined that there was ample capacity at other transfer stations throughout the City to receive displaced waste from the overburdened transfer stations at issue and that while there was a probability of job losses and closures, the overall impact on the industry and service of the four-districts involved would be insignificant.

Petitioners' assert in its first cause of action that the City failed to take a "hard look" at the potential impacts of Local Law 152 in violation of SEQRA and CEQRA. Specifically, petitioners claim that the City adopted an inaccurate analysis of the slack capacity of transfer stations in affected communities; that the City's EAS failed to identify the impact from the reduction of capacity at the transfer stations currently relied upon; that the City failed to identify adverse impacts such as air emission, noise, and increase in miles traveled related to transporting waste farther to unload at transfer stations in unaffected areas; and that the City erroneously concluded that adverse socioeconomic losses were not significant.

The City argues for dismissal asserting that petitioners' challenge of the City's assessment of potential socioeconomic, transportation, air quality, and noise impacts to the transfer station industry

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[2] Local Law 152 reduces the permitted capacity of existing private solid waste transfer stations in four community districts in New York City. Local Law 152 includes several exemptions that a transfer station may use to exempt certain categories of waste volumes from the calculations of total capacity to be reduced.

[3] Waste transfer stations are facilities that may receive, process, and hold waste for eventual transfer to another location for further processing or final disposal. Putrescible transfer stations receive waste containing organic material and non-putrescible transfer stations receive inorganic materials, including construction and demolition materials and clean-fill material.

[4] Both types of transfer stations impose heavy truck traffic and attendant diesel emissions, noise, and safety hazards. There are 35 waste transfer stations citywide. All of the City's private putrescible transfer stations are located in the Bronx, Brooklyn, and Queens. A majority of the City's transfer stations are located in Bronx, Brooklyn and Queens Community Districts. (City's *Exhibit E*).

is conclusory and unsupported by verifiable data. The City further argues that its assessment did, in fact, acknowledge potential job loss. However, petitioners' individual economic circumstances were not the focal point of the analysis as SEQRA and CEQRA require an analysis and "hard look" at the entire industry. As such, the City contends that it followed the established methodologies of the CEQRA Technical Manual and after assessing the relevant areas of environmental concern, found that Local Law 152 would not have a significant impact on the environment.

SEQRA and CEQRA both require agencies to "determine whether the actions they directly undertake, fund, or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement." (See *6 NYCRR § 617.1.*) If the agency determines that the environmental impact is not significant, it issues a 'negative declaration." These regulations further state that the intention is for a suitable balance of social, economic, and environmental factors to be incorporated into the planning and decision-making processes of state, regional, and local agencies and not for environmental factors be the sole consideration in decision-making. *Id.* Compliance with SEQRA/CEQRA requires agencies to take a "hard look" at environmental consequences and that information be considered which would lend itself to a reasoned conclusion. However, agencies are not required to consider every possible alternative. (See *Coalition Against Lincoln W., Inc. v New York*, 94 AD2d 483 [1st Dept 1983]).

Here, petitioners' assertion that the City's EAS is incomplete and based upon erroneous data is wholly conclusory and unsupported by evidence. A review of the EAS shows that the City analyzed areas affecting the public, such as potential impacts to transportation, noise, air quality, and socioeconomic conditions. As to petitioners' assertions that the City failed to assess its economic losses, this contention is not accurate as the EAS clearly indicates that an assessment of potential economic loss was included in its assessment of the entire industry. Further, the Court of Appeals has held that in order to have standing to challenge an environmental review a party must demonstrate environmental injuries not solely economic injuries. (See *Mobil Oil Corp. v Syracuse Indus. Dev. Agency*, 76 NY2d 428 [1990].) Consequently, the City was not required to assess the economic impact specific to petitioners as it was charged with assessing environmental impacts on the industry and communities affected as a whole. Accordingly, this cause of action is without merit.

Petitioners in its second cause of action assert that the City impermissibly segmented its environmental review of Local Law 152 from its development of Commercial Waste Zones in violation of SEQRA. Petitioners assert that as Local Law 152 is part of "Commercial Waste Zones," a City plan to create zones for waste hauling companies where hauling companies bid to offer services within designated zones, Local Law 152 should not have been assessed and/or reviewed individually.

The City argues that distinct from Commercial Waste Zones, the intent of Local Law 152 is to reduce transfer station capacity in specific overburdened communities in order to reduce exposure to residents impacted by the high concentration of transfer stations near their homes. The City contends that Local Law 152 and Commercial Waste Zones are not dependent on each other nor part of the same plan, and the implementation of one will not impact the result of the other.

As to this cause of action, the Court finds that Local Law 152 was drafted in response to specific health and hazard concerns of overburdened communities housing more than their fair share

of New York City's garbage by way of transfer stations and thus, not connected to the Commercial Waste Zone plan which addressed issues within the private carting/hauling industry outside of the health concerns of the community. Accordingly, this cause of action is likewise without merit.

For its third cause of action, petitioners claim that the adoption of Local Law 152 failed to abide by the Solid Waste Management Plan (SWMP) and is in direct conflict with it as SWMP contemplates a reduction of transfer capacity of up to 6,000 tons per day whereas Local Law 152 requires reductions of approximately 10,500 tons per day. Petitioners assert that a modification of SWMP was required prior to the Council's enactment of Local Law 152.

The City avers that pursuant to *6 NYCRR 306-15.11(b)(1)*, a SWMP modification is only required when there is a "significant change in the method of managing all or any significant portion of the solid waste generated within the planning unit." The City argues that the SWMP is inclusive of the City's goal of identifying transfer station capacity reduction in overburdened areas, if legally feasible, and if it can be done without affecting the City's ability to conduct waste disposal. The City argues that Local Law 152 does exactly that and does not change SWMP's policy and further, that the change from the aspired 6,000 tons to the approximate 10,000 tons does not amount to a significant change to the way New York City manages waste.

On this ground, the Court finds that Local Law 152 has fulfilled the expectation and the aspirations of SWMP by enacting a law which will alleviate specific districts from over exposure to toxins by reducing the amount of waste at the overburdened transfer stations in their respective communities. It would appear that the goal of 6,000 tons is met satisfactorily, if not remarkably, by Local Law 152 and without impeding on the City's obligation to dispose of waste. Accordingly, petitioners' argument is rejected, and its third cause of action is dismissed.

As a fourth cause of action, petitioners argue that Local Law 152 is preempted because it conflicts with state law and therefore, is a violation of Article 9 of the New York State Constitution and New York Municipal Home Rule Law § 10(1). Petitioners state that Local Law 152 is inconsistent with New York State Department of Environmental Conservation (NYSDEC) permits issued to the private transfer stations and that inasmuch as the capacity permitted by DSNY is identical to that permitted by NYSDEC, Local Law 152 attempts to modify or revoke the permits issued. Petitioners claim that as such, Local Law 152 would prevent the City from managing waste in compliance with NYSDEC and SWMP.

The City argues that the NYSDEC waste transfer station permits authorize a transfer station to accept "up to" and receive "no more" than a certain amount of tonnage per day as articulated in the respective permits. According to the City, this simply certifies a station's ability to handle a particular amount of tonnage but does not require that the station handle that specific amount. Additionally, the City argues that the NYSDEC provision pertaining to actions constituting modifications state that any proposed change that would "(i) affect the hours of facility operation; or (ii) increase the volume(s) or vary the types(s) of any waste accepted at the facility; or (iii) increase the parking or queuing of vehicles associated with the subject facility; or (iv) increase the physical extent of the facility; or (v) increase the transportation, noise, odor, dust, or other impact of the facility, requires prior written authorization from the Department in the form of a permit or permit modification. (See *NYSDEC Permits*, Petitioners' Exhibit P). As the NYSDEC is concerned with any increase in waste management beyond the capacities permitted and related impacts on the

environment, downward adjustments do not require NYSDEC permit modifications. As to petitioners' argument that Local Law 152 violates SWMP, the City re-iterates that the SWMP details an initiative to reduce waste capacity in overburdened areas and as such, Local Law 152 is not in conflict with SWMP but instead incorporates its policies.

The court concurs with the arguments advanced by the City as a clear reading of the NYSDEC permits annexed establish that each facility has been licensed to handle maximum amounts of waste which should not be exceeded without NYSDEC approval. However, handling amounts below the maximum is not only permissible, but safer for the environment and serves to decrease transportation, noise, odor, and dust, factors the NYSDEC considers when granting permits and any modifications thereto. Furthermore, the Court of Appeals noted that "nothing in the state legislation regarding management of solid waste 'shall preclude the right of any [local government] to adopt local . . . ordinances' so long as the local legislation will 'comply with at least the minimum applicable requirements set forth in' the legislation. (*Town of Concord v Duwe*, 4 NY3d 870 [2005]) citing, *ECL 27-0711*). The Court of Appeals further held that "local laws governing municipal solid waste management broader than--but consistent with--the state legislation are explicitly permitted by the Environmental Conservation Law." *Id.* Therefore, petitioners' arguments fail as Local Law 152 does not preempt state law, but instead incorporates and calls for a strict regulation of waste.

Next, petitioners assert that Local Law 152 is unconstitutionally vague. Petitioners allege Local Law 152 fails to address how it will be applied in the future if the currently affected communities are no longer overburdened and asserts that Local Law 152 fails to define certain terms, criteria, or standards.

In its dismissal motion, the City avows that as statutes do not have to account for every future circumstance that may arise, petitioners' forecast of hypothetical scenarios should be rejected. The City also argues that petitioners' hypothetical scenarios will be ripe for judicial intervention should they be able to demonstrate harm in an *actual* instance. The City relies upon *NY Horse & Carriage Assn. v NY, Dept. of Consumer Affairs*, 144 Misc 2d 883 [Sup Ct, NY County 1989] for the proposition that "Statutes, of necessity, must speak in generalities, leaving application as to each specific case to the reasonableness and discretion of executive, administrative, and judicial officers." As to petitioners' claim that Local Law 152 fails to define certain terms, standards, and criteria, the City contends that the language of Local Law 152 is clear and that any purported ambiguity is inaccurate as terms such as "recycled," for example, are defined in the *New York City Administrative Code* § 16-303 and incorporated by reference in Local Law 152.

A statute is unconstitutionally vague on its face only when it cannot validly be applied to any conduct. (See *Stallone v Abrams*, 183 AD2d 555 [1st Dept 1992], *citing Brache v County of Westchester*, 658 F2d 47 [2d Cir 1981]). Furthermore, pursuant to the two-part test articulated by the Supreme Court, to determine whether a statute is unconstitutionally vague, the court must first determine whether the statute "gives the person of ordinary intelligence a reasonable opportunity to know what is prohibited" and then determine whether the law "provides explicit standards for those who apply [it]." (*United States v Schneiderman*, 968 F2d 1564 [2d Cir 1992], *citing Grayned v City of Rockford*, 408 US 104 [1972]).

Here, the court finds that Local Law 152 is not unconstitutionally vague as evidenced by arguments advanced by petitioners against its enactment in which they demonstrate a keen

understanding of what conduct constitutes compliance with Local Law 152 and the mandates therein. Also, the questions and hypotheticals posed by petitioners do not serve as a basis to illustrate vagueness and are not ripe for review. However, as to the specific concern of how Local Law 152 will be applicable when overburdened communities are no longer overburdened, it would appear obvious that the goal of Local Law 152 is to alleviate overburden areas and that compliance with Local Law 152 will hopefully achieve same. Continued compliance with Local Law 152, should serve to prevent the reoccurrence of the environmental issues which led to the necessity of its enactment at the outset.

Lastly, petitioners assert that Local Law 152 violates transfer station owners' substantive due process under the Fourteenth Amendment of the US Constitution and is a violation of its civil rights actionable under 42 USC §1983. Petitioners assert that it holds permits issued by NYSDEC and DSNY permitting the reception of specific daily tonnage of waste for transfer and that petitioners, relying on these permits, made investments and assumed long-term debt obligations to fund the infrastructure needed to operate a transfer station. Because Local Law 152 drastically decreases the capacity permissible at specific transfer stations, petitioners assert a deprivation of their rights and privileges under New York state law. Furthermore, petitioners assert that Local Law 152 is arbitrary and capricious as there is no rationale for the capacity reductions mandated therein.

The City contends that petitioners have failed to assert a constitutional or federal statutory right of which Local Law 152 has deprived them. To the extent petitioners believe they hold a property interest in the renewals of the permits they hold, the City argues that petitioners are incorrect as an applicant for a renewal of a waste transfer permit has no inherent property interest in the renewal and thus, petitioners suffer no deprivation of due process rights. Additionally, as Local Law 152 addresses a persistent problem affecting public health, welfare, and safety in certain community districts, it responds to a matter undeniably within the scope of public health, safety, and welfare and is not arbitrary or irrational.

Pursuant to 42 USC § 1983, petitioners must allege they were denied a constitutional or federal statutory right and that the deprivation of such occurred under color of state law. Consequently, petitioners must establish a clearly identifiable property interest, that pursuant to state or local law they had a legitimate claim of entitlement, and that the government action taken was without legal justification. (See *Bower Assoc. v Town of Pleasant Val.*, 2 NY3d 617 [2004]). A law which furthers public health, safety, or general welfare serves a valid governmental purpose. (*NY Coalition of Recycling Enters. v City of NY*, 158 Misc 2d 1 [Sup Ct, NY County 1992]). Here, petitioners have again failed to assert a valid claim as they have no inherent property interest in permit renewals and as it is undeniable that Local Law 152's mandate of a capacity reduction at overburdened waste transfer stations furthers public health and the general welfare of the residents affected by the emissions, vermin, odor, and toxins associated with transporting, collecting and transferring waste, it is not irrational, arbitrary or capricious. To the contrary, this enactment represents the culmination of several years of resident complaints, tests, assessments, meetings, and drafting and redrafting legislation.

Based upon the foregoing with due consideration and careful review of the entire record, which includes the verified petition and complaint with accompanying exhibits and supporting memoranda; the verified answer, along with affirmations, exhibits, and its memorandum of law; the City's motion to dismiss and supporting papers; petitioners' opposition and supporting documents;

the City's' reply; and the memorandum of law in opposition to the verified petition and in support of the motion to dismiss submitted by the New York City Environmental Justice Alliance, O.U.T.R.A.G.E., International Brotherhood of Teamsters Local 816, and Cleanup North Brooklyn in coalition by amicus brief (Mot. Seq. 003), the Court finds that the City has shown entitlement to the relief sought.

As noted previously, to succeed on a challenge to a negative declaration (no negative impact to the environment), a petitioner must demonstrate that the determination of no significant adverse impacts, is arbitrary, capricious, or made in violation of lawful procedure. In the case at bar, despite having advanced six causes of action seeking to demonstrate that the City's EAS was inaccurate or that the enactment of Local Law 152 itself was done incorrectly or in violation of law, petitioners' claims appear to be motivated substantially and closely intertwined with its anticipation of its own potential financial losses. Here, petitioners predict losses of several employees and even possible business closures and while economic loss is a tangible concern, not taken lightly by this Court, the loss of health, well-being, and life of the public affected by these overburdened transfer stations must be of paramount concern. As stated in the City's papers, as well as, the amicus brief submitted, Local Law 152 addresses serious public health and safety concerns of residents who have suffered from increased air pollution emanating from the many trucks traveling to and from the overburdened transfer stations in their neighborhoods. Local Law 152 undeniably took several years of assessment and negotiation as seen from the foregoing. Its mandates are rational and demonstrate a reasonable basis for its provisions. Accordingly, it is hereby

ORDERED and ADJUDGED that as petitioners fail to state a cause of action or claim warranting annulment of Local Law 152, the City's motion to dismiss (Mot. Seq. 002) is hereby granted, and the petition and complaint (Mot. Seq. 001) are properly dismissed and denied in their entirety; and it is further

ORDERED that Mot. Seq. 003 is granted to the extent that the Court reviewed and considered the arguments advanced in the amicus brief; and it is further

ORDERED that any relief not expressly addressed herein has nonetheless been considered and is denied.

October 3, 2019

HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[ ] **DENIED**	[ ]	**GRANTED IN PART**	[X]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**